

AMENDMENT UNDER 37 C.F.R. 1.116**EXPEDITED PROCEDURE****EXAMINING GROUP 2666****PATENT****Application # 09/703,699****Attorney Docket # 2000-0020 (1014-068)****REMARKS**

The Examiner is respectfully thanked for the thoughtful consideration provided to this application. Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

Each of claims 1-3, 5, 7, 9, 12, 17, and 18 has been amended for reasons unrelated to patentability, including at least one of: to explicitly present one or more elements implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry.

Claims 1-20 are now pending in this application. Each of claims 1, 5, and 9 are in independent form.

1. The Objection to Claim 5

Claim 5 was objected to because of an informality. Claim 5 has been amended to correct the informality. Therefore, Applicants respectfully submit that any grounds for this objection has been removed, and respectfully request acknowledgment thereof.

AMENDMENT UNDER 37 C.F.R. 1.116**EXPEDITED PROCEDURE****EXAMINING GROUP 2666****PATENT****Application # 09/703,699****Attorney Docket # 2000-0020 (1014-068)****2. The Indefiniteness Rejections**

Claim 17 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite. These rejections are respectfully traversed. Claim 17 has been amended to correct a typographical error and to broaden the claim.

Thus, reconsideration and withdrawal of the rejection of claim 17 is respectfully requested.

3. The Obviousness Rejections

Each of claims 1-20 was rejected under 35 U.S.C. 103(a) as being unpatentable over various combinations of Lockhart (U.S. Patent No. 6,189,035), Albert (U.S. Patent No. 6,549,516), Jain (U.S. Patent No. 5,491,801), Cannon (U.S. Patent No. 6,754,715), Teraslinna (U.S. Patent No. 5,706,279). These rejections are respectfully traversed.

None of the applied references, either alone or in any combination, establish a *prima facie* case of obviousness. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." See MPEP 2143. Moreover, the USPTO "has the initial duty of supplying the factual basis for its rejection." *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (C.C.P.A. 1967).

AMENDMENT UNDER 37 C.F.R. 1.116**EXPEDITED PROCEDURE****EXAMINING GROUP 2666****PATENT****Application # 09/703,699****Attorney Docket # 2000-0020 (1014-068)****A. "Any" "Source" or "Address"**

Lockhart is allegedly "directed to the processing of data packets that originate from an external network, such as the Internet, and are directed to users operating in an internal network."

See col. 1, lines 5-8. To accomplish this function, as shown in and described in relation to FIG. 1, Lockhart utilizes a single "data packet gate... for selectively limiting the number of data packets that pass through to the internal network". See col. 1, lines 52-54. Via the "data packet gate", Lockhart allegedly involves "determining whether an incoming data packet is on a list of selected (trusted) sources, and, if not on the selected list, rejecting the data packet if the number of data packets from that source is greater than a threshold number." See col. 2, lines 45-50. As shown by Lockhart's FIG. 4, element 60, Lockhart does not "increment[s]" the "recent packet count" for packets received from a "trusted source".

Further, Lockhart allegedly recites that "data packets that originate from the internal network 16 are transmitted to their destination in the external network without limitation or modification (col. 2, lines 63-65)." As shown in Lockhart's FIG. 3, rather than being "process[ed]", these packets are "pass[ed] through".

Independent claim 1 recites "tabulating at said first router a count of IP data packets received from any particular IP source during a first time interval." Independent claim 5 recites "tabulating at said first router a count of IP data packets routable to any particular IP destination address during a first time interval." Independent claim 9 recites "at a first router, determining that a time-based data traffic measure from any particular IP source exceeds a predetermined threshold."

AMENDMENT UNDER 37 C.F.R. 1.116**EXPEDITED PROCEDURE****EXAMINING GROUP 2666****PATENT****Application # 09/703,699****Attorney Docket # 2000-0020 (1014-068)**

Lockhart does not teach, expressly or inherently, “tabulating... a count of IP data packets received from **any** particular IP “source” or “tabulating... a count of IP data packets routable to **any** particular IP destination address”, or “a time-based data traffic measure from **any** particular IP source”. Instead, by “pass[ing] through” packets “that originate from the internal network” “without limitation or modification [or processing],” Lockhart teaches away from “tabulating... a count of IP data packets received from **any** particular IP “source” or “tabulating... a count of IP data packets routable to **any** particular IP destination address”, or “a time-based data traffic measure from **any** particular IP source”. Thus, Lockhart does not teach, expressly or inherently, all of the claim elements.

B. “Router”

Independent claims 1, 5, and 9 recite a “router”. Lockhart does not expressly or inherently teach or suggest a “router”.

Instead, Lockhart allegedly recites that “[t]his problem is solved according to the invention by establishing a **data packet gate** 20 (FIG. 2) in the link 14 between the external network 10 and the internal network 16 ...” See col. 2, lines 40-46. Thus, Lockhart does not teach or suggest either a “router” or “directly interconnected by a first plurality of data paths”.

The present Office Action recites “[a]s Lockhart’s invention is intended to prevent excessive traffic from a particular user, this **suggests** the use of Lockhart’s invention in a router.” See paragraph 11; see also, paragraph 14.

Lockhart does not expressly or inherently teach or suggest implementing the alleged “data packet gate” in a router. Since a router is not expressly disclosed in Lockhart, Applicant presumes that the present Office Action intends to argue that a “router” is inherent in Lockhart.

AMENDMENT UNDER 37 C.F.R. 1.116**EXPEDITED PROCEDURE****EXAMINING GROUP 2666****PATENT****Application # 09/703,699****Attorney Docket # 2000-0020 (1014-068)**

Applicant respectfully request provision of a reference supporting that contention as required under MPEP 2112. "Inherent anticipation requires that the missing descriptive material is 'necessarily present,' not merely probably or possibly present, in the prior art." *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295, 63 USPQ2d 1597, 1599 (Fed. Cir. 2002). No evidence has been presented that the admittedly "missing descriptive material is 'necessarily present'" in Lockhart. Thus, Lockhart does not teach, expressly or inherently, all of the claim elements.

C. "Second Router"

Independent claim 1 recites "responsive to said determining step, **sending a message to a second router**, said message adapted to instruct said second router to discard packets from said particular IP source." Claim 5 recites "responsive to said determining step, sending a message to a second router, said message adapted to instruct said second router to discard packets routable to said particular IP destination." Claim 9 recites "responsive to said determining step, sending a message to a second router, said message adapted to instruct said router to discard packets from said particular IP source."

Lockhart does not expressly or inherently teach or suggest "responsive to said determining step, **sending a message to a second router**, said message adapted to **instruct said second router to discard packets from said particular IP source**."

Thus, Lockhart does not teach, expressly or inherently, all of the claim elements. Moreover, Lockhart provides no suggestion or motivation for a "second router", "sending a message to a second router", or "instruct[ing]" a "second router to discard packets".

AMENDMENT UNDER 37 C.F.R. 1.116**EXPEDITED PROCEDURE****EXAMINING GROUP 2666****PATENT****Application # 09/703,699****Attorney Docket # 2000-0020 (1014-068)****D. Other References**

None of the other applied references cure Lockhart's deficiencies. Thus, even if there were motivation or suggestion to modify or combine the applied references (an assumption with which the applicant disagrees), and even if there were a reasonable expectation of success in combining or modify the applied references (another assumption with which the applicant disagrees), the applied references still do not expressly or inherently teach or suggest every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness.

Because no *prima facie* rejection of any independent claim has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of these rejections is respectfully requested.

4. Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter:

"none of the references of record alone or in combination disclose or suggest the combination of limitations found in the independent claims. Namely,

claims 1-4 are allowable because none of the references of record alone or in combination disclose or suggest 'receiving at a first router a plurality of IP data packets, the first router directly interconnected by a first plurality of data paths to a first sub-plurality of interconnected routers; tabulating at said first router a count of IP data packets received from a particular IP source address during a first time interval; storing said count of IP data packets in a memory device for subsequent processing; determining that a time-based data traffic measure from

AMENDMENT UNDER 37 C.F.R. 1.116**EXPEDITED PROCEDURE****EXAMINING GROUP 2666****PATENT****Application # 09/703,699****Attorney Docket # 2000-0020 (1014-068)**

said particular IP source exceeds a predetermined threshold; and responsive to said determining step, sending a message to a second router, said message adapted to instruct said second router to discard packets from said particular IP source, wherein said second router is not a source router for said packets, the second router directly interconnected by a second plurality data paths to a second sub-plurality of interconnected routers';

claims 5-8 and 16-20 are allowable because none of the references of record alone or in combination disclose or suggest 'receiving a plurality of IP data packets at a first router, the first router directly interconnected by a first plurality of data paths to a first sub-plurality of interconnected routers; tabulating at said first router a count of IP data packets routable to a particular IP destination address during a first time interval; storing said count of IP data packets, said count routable to a particular IP destination address in a memory device for subsequent processing; determining that a time-based data traffic measure for packets routable to the particular IP destination exceeds a predetermined threshold; and responsive to said determining step, sending a message to a second router, said message adapted to instruct said second router to discard packets routable to said particular IP destination, wherein said second router is not a source system for said packets, the secondrouter directly interconnected by a second plurality of data paths to a second sub-plurality of interconnected routers'; and

claims 9-15 are allowable because none of the references of record alone or in combination disclose or suggest 'in an Internet Protocol (IP) data network that comprises a plurality of interconnected routers at a first router, determining that a

AMENDMENT UNDER 37 C.F.R. 1.116**EXPEDITED PROCEDURE****EXAMINING GROUP 2666****PATENT****Application # 09/703,699****Attorney Docket # 2000-0020 (1014-068)**

time-based data traffic measure from the particular IP source exceeds a predetermined threshold, the first router directly interconnected by several data paths to a first sub-plurality of interconnected routers; and responsive to said determining step, sending a message to a second router, said message adapted to instruct said router to discard packets from said particular IP source, wherein said second router is not a source router for said packets, the second router directly interconnected by several data paths to a second sub-plurality of interconnected routers.””

AMENDMENT UNDER 37 C.F.R. 1.116

EXPEDITED PROCEDURE

EXAMINING GROUP 2666

PATENT

Application # 09/703,699

Attorney Docket # 2000-0020 (1014-068)

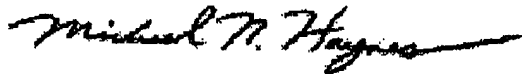
CONCLUSION

It is respectfully submitted that, in view of the foregoing amendments and remarks, the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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